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No. 86-108

In The
Supreme Court of the United States
October Term, 1986

GARY HILTON, Superintendent,
New Jersey State Prison, Trenton, New Jersey
and W. CARY EDWARDS, Attorney General
of New Jersey,

Petitioners,

-vs.-

DANA BRAUNSKILL,

Respondent.

PETITIONERS' MOTION TO FILE SUPPLEMENTAL BRIEF AND APPENDIX

PETITIONERS' SUPPLEMENTAL BRIEF AND APPENDIX

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DOCKET NO. 86-108

Gary Hilton, Superintendent,
New Jersey State Prison, Trenton, New Jersey
and W. Cary Edwards, Attorney General
of New Jersey,

Petitioners,

-vs.-

Dana Braunskill,

Respondent.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AND APPENDIX

Petitioners, Gary Hilton, *et al.*, hereby respectfully move for leave to file a supplementary brief and appendix to bring to the Court's attention relevant events which have occurred subsequent to oral argument in this case.

Specifically petitioners wish to advise the Court that on April 30, 1987, respondent was arrested on charges of aggravated assault on a police officer. This event impacts on respondent's dangerousness, an issue which has been contested by the parties throughout this litigation. Moreover, this incident would affect respondent's parole status and could dramatically affect the length of time which respondent would be required to serve if either a stay of his release from custody is granted or the decision to grant habeas corpus is reversed on the merits.

Since this event could have an impact on this Court's decision, petitioners request permission to file the attached supplemental brief and supplemental appendix.

Respectfully submitted,

John G. Holl
Assistant Attorney General

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PETITIONERS' SUPPLEMENTAL BRIEF

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QUESTION PRESENTED

1. Does respondent's arrest subsequent to oral argument in this case present additional evidence of his dangerousness which can be considered by this Court and/or the District Court in determining whether a stay of his release on habeas corpus should be granted?

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STATUTES CITED

N.J.S.A. 30:4-123.60. Violation of condition; penalities; revocation of parole; new criminal charges; detention; revocation proceedings; revocation on conviction

a. Any parolee who violates a condition of parole may be subject to an order pursuant to section 17 of this act[1] providing for one or more of the following:

(1) That he be required to conform to one or more additional conditions of parole; (2) That he forfeit all or a part of commutation time credits granted pursuant to R.S. 30:4-140.

b. Any parolee who has seriously or persistently violated the conditions of his parole, may have his parole revoked and may be returned to custody pursuant to sections 18 and 19 of this act.[2] The board shall be notified immediately upon the arrest or indictment of a parolee. The board shall not revoke parole on the basis of new criminal charges which have not resulted in a disposition at the trial level except that upon application by the prosecuting authority, the chairman of the board or his designee may at any time detain the parolee and commence revocation proceedings pursuant to sections 18 and 19 of this act when he determines that the new charges against the parolee are of a serious nature and it appears that the parolee otherwise poses a danger to the public safety. In such case, a parolee shall be informed that, if he testifies at the revocation proceedings, his testimony and the evidence derived therefrom shall not be used against him in a subsequent criminal prosecution.

c. Any parolee who is convicted of a crime committed while on parole shall have his parole revoked and shall be returned to custody unless the parolee demonstrates, by clear and convincing evidence at a hearing pursuant to section 19 of this act, that good cause exists why he should not be returned to confinement.

———o———

STATEMENT OF THE CASE

Petitioners rely on the statement of the case contained in their merits brief.

———o———

LEGAL ARGUMENT

Respondent's arrest subsequent to oral argument should be considered by this Court.

On April 30, 1987, respondent was arrested on charges of aggravated assault on a police officer. This arrest involved firing a .25 caliber handgun at the officer. (App. A) Although respondent has not yet been indicted on this charge petitioners believe that his arrest provides relevant additional evidence of his dangerousness.

Petitioners have argued throughout the course of this litigation that respondent is dangerous and that this dangerousness is a factor which should have been taken into account by the lower courts in response to petitioners' motion to stay respondent's release on federal habeas corpus grounds. Respondent has argued, *inter alia,* that his dangerousness has not been demonstrated. We believe that evidence of respondent's recent arrest on an extremely serious charge is further evidence of his dangerousness. We also believe that this evidence should be taken into account by this Court if it decides to determine whether a stay should have been granted or, by the district court, if the case is remanded.

Moreover, at oral argument this Court asked the parties how much longer respondent would have remained in custody if a stay of his release had been granted. At that time the parties acknowledged that respondent would have

remained in custody for approximately an additional eight months prior to his release on parole. Under New Jersey law, respondent's arrest may have led to a revocation of his parole if habeas corpus had not been granted. N.J. Stat. Ann. sec. 30:4-123.60.b.(West 1982). This revocation would have increased the length of continued incarceration by approximately three years.

CONCLUSION

Based on the foregoing arguments petitioners respectfully request that this Court reverse the order of the lower court and either stay respondent's continued release or order the case remanded to the district court for further hearings.

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By: .....
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APPENDIX

Police Department Incident Report Newark, N.J.

Fill out complete report when listed in classification list and report guide as 802 (no asterik). Do not fill out shaded portion when listed 802 * (with asterik).

1. Victim's or Complainant's Name—P. O. Lawrence Lewis; 2. Telephone No.—733-7940; 3. Residence Number—32 Franklin St., Newark, N.J.; 4. Sex—M; 5. Race; 6. Age; 7. Occupation—Police Officer; 8. Injury—[ ] Yes [ ] No; 9. Sobriety of Victim—[ ] Sober; [ ] Had Been Drinking [ ] Intoxicated; 10. Can Vict. Ident Offender—[ ] Yes [ ] No; 11. Person Reporting Crime—Same as #1; 12. Telephone No.—Same as #2; 13. Residence of Person Reporting Crime—Same as #3; 14. Time Rep't—2230; 15. Month—4, Day 30, Year 87; 16. Occurred on View—[X] Yes [ ] No; 17. Statute or Ordinance—2C:12-1; 18. Sector—215; 19. District—N-9360; 20. Cent. Complt No.—34945; 21. Reporting Officer (Name)—P. O. L. Lewis (Badge No.)—1566 (Commd.)—Intelligence Sq.; 22. Incident—Aggravated Assault on Police; 22A. Occurred On Public Housing Property?—[ ] Yes [ ] No; 23. Location—430 Broad St.; 24. Time of Occurence (On or Bet.)—Hour—2230 Day of Week—Thru. Month—April Day—30 Year—87; 25. Was Force Used?—[X] Yes [ ] No [ ] Not Known; 26. Was a Weapon Used?—[X] Yes [ ] No [ ] Not Known; 27. Type of Premises or Property Attacked—Person on streets; 28. How Attacked—Shot At Police Officer; 29. Means of Attack—With 25 Automatic Gun 30. Object of Attack—Physical Force; 31. Modus Operandi—; 32. Vehicle Involved In Crime—[ ] Stolen [ ] Used By Offender Year Make Lic. Number Color Body Type Serial Number; 33. Name of Suspect—Dana Terrance Braunskill (Alias) (Residence) Sex—M, Race—B, Age—28, Height—5'11, Weight—175, Color of Hair—Blk., Color of Eyes—Brn., Describe Clothing Worn and Peculiarities—Silver Jacket; 34. Additional Information (Do Not Repeat Information Listed In Numbered Blocks)—An unidentified B/M approached me and stated that the above described male had a gun in his jacket pocket. I approached the suspect and told him that

I was a Newark Police officer and to take his hands out of his pockets. Suspect had both hands in his pocket. Suspect told officer that he did not care who I was and for me not to touch him. Officer grabbed suspect by the arm and he pushed officer in the chest and pulled the gun out of his pocket and fired one round at officer, then ran toward Broad St. Due to the traffic officer fired two rounds over suspects head, suspect ran across the streets turned and fired another round at officer. Officer returned the fire by firing two more rounds. Suspect kept running toward the Lackwanna railroad station. The Lackwanna Transit police gave chase and apprehended the suspect with the silver 25 automatic revolver. Suspect was given his rights and taken to the robbery squad and arrested on the above charge and other charges. See other reports for details. Det. John Smith and Detective Thomas Hackney from the Robbery Sq. along with Sgt. Padilla from the North Dist. responded to the scene.

34A. Stranger to Stranger Crime—[X] Yes [ ] No[ ] Unknown; 34B. Outlaw Len.; 34C. Report Source:—1. [1] Dispatch 2. [ ] Phone 3. [ ] Walk-in 4. [ ] Other; 35. Estimated Value By Type of Property—A. Currency B. Jewelry C. Furs D. Clothing E. Local Autos F. Miscellaneous G. Total; 36. Other Officers At Scene—(Name) Veh. No. Command Badge No. Rank: 37. Other Reports Submitted—[ ] DP 1:152 Property [ ] DP 1:152-1 Auto [ ] DP 1:225A Statement [X] DP 1:796 Cont. [ ] DP 1:800 Arrest; 38. Persons Arrested (Name)—Dana Terrance Braunskill, Cent. Apr. No.—7732; 39. Witnesses (Name and Residence) (Telephone No.)—Harkeem 430 Broad St. Lincoln Hotel Rm. 284; 40. Teletype Alarm Number—; 41. Name of Detective Notified—; 42. Signature of Reporting Officer—/s/ Lawrence J. Lewis; 43. Status of Offense—[ ] Unfounded [X] Cleared By Arrest [ ] Not Cleared [ ] Exceptional Clearance; 44. Cleared By Arrest Of: (Check Appropriate Box or Boxes: [X] Adult [ ] Juvenile [ ] Adult and Juvenile [ ] Narcotic Offender; 45. Status of Case [X] Pending Active [ ] Pending Inactive

[ ] Closed; 46. Class—041; 47. Re-Class—; 48. Key-Punched By:—; 49. Verified By—; 50. Supervisor Approving a Classifying:—/s/ Sgt. Michael Dominick, (Date) 4-30-87; 51. Time Approved—; 52. Indexed By:—; 53. Number of Pages—;

DPI: 802.4-84 75M Appendix A

Record & Identification Bureau File Copy

Police Department Continuation Report Newark, N.J.

Specific Offense—Aggravated Assault On A Police Officer; Dist. Complt. No.—N-9360; Central Complaint No.—34945; Statute or Ordinance (RS NJS Rev. Ord.)—2C:12-1; Location of Offense—430 Broad St. (In Parking Lot); Date of Ordinance—4/30/87;

Amended Property Valuation—A. Currency B. Jewelry C. Furs D. Clothing E. Local Auto F. Miscellaneous G. Totals; Rank Signature of Officer Submitting Report—Det. /s/ Laurence T. Lewis, Command—Intelligence Sq. Badge Nmber—1566; Status of Offense—[ ] Unfounded [X] Cleared By Arrest [ ] Not Cleared [ ] Exceptionally Cleared, Status of Case: [X] Pending Active [ ] Pending Inactive [ ] Closed; Cleared By Arrest Of [X] Adult [ ] Juv & Adult [ ] Narcotic Offender; Classification: —041; Reclassification—; Read Classified and Approved By /s/ Michael Dominick; Date—4-30-87; Tallied By:—; Indexed By:—; Filed By:—; Page Number:—; No. of Pages—;